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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,274	02/16/2001	Gary T. Ketchum	5018	5288

7590 02/03/2004

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EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 02/03/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/788,274
Filing Date: February 16, 2001
Appellant(s): KETCHUM, GARY T.

MAILED

FEB 03 2004

GROUP 3700

Donald D. Mon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 19, 2002.

This is in response to the brief on appeal filed December 19, 2002.

Art Unit: 3764

(1) *Real Party in Interest*

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

This appeal involves claims 1-4.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-4 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

5,862,804 Ketchum 1-1999.

Claims 1-4 are rejected under 35 U.S.C. 102b as being finally rejected. This rejection is set forth in prior Office Action, Paper No. 3.

(11) Response to Argument

Appellant argues that Ketchum uses two sensors wherein the present invention uses one sensor. The examiner concurs. However, the claims require one sensor and circuitry which is independent of ambient temperatures. However, Ketchum discloses a sensor (28) that is used to determine the difference in temperature of body fluids.

The present invention may have eliminated one of the sensors. However, eliminating one of the sensors does not provide any novelty to the claims that were rejected in Paper No. 9. Appellant argues that claim 1 requires a circuit simulative of a selected temperature. However, the circuit disclosed by Ketchum is simulative of selected temperatures. Once the sensor (28) detects the change in the temperature of the liquid it sends a signal to the circuit, which sends a signal to an amplifier.

The amplifier is used to detect a difference in the resistance of the sensor (28) and a second sensor (25). However, claim 1 only requires one sensor that is contact by a fluid. Clearly Ketchum, discloses a sensor (28) that is contact by a fluid. It appears that the only different in the present invention and the prior art is the function that the different circuit performs. However, appellant has only claimed a circuit and functions that the circuit are adapted to perform. Clearly no patentable weight was given to the functions that the circuits are used to perform. However, Ketchum appears to perform each function as recited in claims 1 and 4.

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Novelty is not based on removing structural elements in order to make an invention simple, less expensive or free of complications.

Novelty in an article (product) claim requires a structural limitations that is new and provided utility over the prior art. Clearly, Ketchum has not met this burden.

For the above reasons, it is believed that the rejections should be sustained.

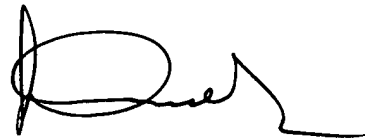
Respectfully submitted,

MB, March 10, 2003
November 5, 2003

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